

1 FOR PUBLICATION

2 **UNITED STATES BANKRUPTCY COURT**  
3 **EASTERN DISTRICT OF CALIFORNIA**

4 IN RE TODD JAMES OLIVER, )  
5 dba T. James Construction, dba ) Case No. 22-20811-C-7  
James Built Construction Inc., )  
6 Debtor. ) DCN No. PGM-1

7

8

9 **OPINION**

10 CHRISTOPHER M. KLEIN, Bankruptcy Judge:

11 In this case of early impression, the debtor's motion for an  
12 order compelling abandonment of an exempt homestead on the theory  
13 of inconsequential value and benefit to the estate under 11  
14 U.S.C. § 554(b) is denied as premature on account of § 522(q).

15 The value and benefit to the estate remains uncertain  
16 because § 522(q)(1)(B)(ii) could limit the claimed \$626,400  
17 exemption to \$189,050 if pending adversary proceedings alleging  
18 fraud and fiduciary fraud establish there is debt arising from  
19 "fraud, deceit, or manipulation in a fiduciary capacity."

20 Depending on the outcome of that open question of law, the  
21 trustee might have more than \$250,000 available to pay claims if  
22 the § 522(q) cap, which was dormant in California until the state  
23 increased its homestead exemption in 2021, applies.

24 As the time for any "party in interest" to object to  
25 exemptions under § 522(q) does not, per Federal Rule of  
26 Bankruptcy Procedure 4003(b)(3), expire until the case is closed,  
27 abandonment will be under § 554(c) incident to case closure.

28 The motion to compel abandonment under § 554(b) is DENIED.

## Facts

Chapter 7 debtor Todd Oliver elected to exempt his residence in Soda Springs, Placer County, California, for \$626,400 under new California exemptions effective in 2021.<sup>1</sup>

He valued the property at \$825,000, subject to consensual liens of \$379,155 and to two judgment liens totaling \$134,339.

In lien avoidance proceedings under § 522(f), the judgment lienors were given time to gather evidence probative of whether the property is his residence and its value exceeded the \$1,005,555 apparently needed to preserve a judgment lien. When such evidence was not forthcoming, the liens were ordered avoided as impairing the claimed exemption under the § 522(f) calculus on the assumption the exemption is \$626,400.

14 Two pending adversary proceedings seek to except debts from  
15 discharge on counts under 11 U.S.C. §§ 523(a)(2) and (a)(4).

16 Meanwhile, the debtor filed the instant motion to compel  
17 abandonment of his exempt property pursuant to § 554(b) as being

<sup>1</sup>Cal. Code Civ. Pro. § 704.730 provides:

(a) The amount of the homestead exemption is the greater of the following:

(1) The countywide median sale price for a single-family home in the calendar year prior to the calendar year in which the judgment debtor claims the exemption, not to exceed six hundred thousand dollars (\$600,000).

(2) Three hundred thousand dollars (\$300,000).

(b) The amounts specified in this section shall adjust annually for inflation, beginning on January 1, 2022, based on the change in the annual California Consumer Price Index for All Urban Consumers for the prior fiscal year, published by the Department of Industrial Relations.

Cal. Code Civ. Pro. § 704.730 (2021). The 2022 adjusted exemption range is \$312,200 to \$626,400; in 2023, \$339,196 to \$678,391.

1 of inconsequential value and benefit to the estate. He reasons  
2 that more than 30 days have transpired since the last amendment  
3 to Schedule C and that no objection to his claim of exemption was  
4 filed within the deadline prescribed by Rule 4003(b) (1).

5

6 Jurisdiction

7 Jurisdiction is founded on 28 U.S.C. § 1334(a). A motion to  
8 compel abandonment of property of the estate is a core  
9 proceeding. 28 U.S.C. § 157(b) (2) (A).

10

11 Analysis

12 The fly in the ointment is 11 U.S.C. § 522(q) (1) (B) (ii),  
13 which preempts and caps California's recently-increased homestead  
14 exemption at \$189,050 for debtors with debt arising from "fraud,  
15 deceit, or manipulation while acting in a fiduciary capacity."

16 The issue is not peculiar to California, which measures its  
17 maximum exemption by "countywide median sale price for a  
18 single-family home in the calendar year prior to the calendar  
19 year." The State of Washington has recently-enacted a similar  
20 homestead exemption measured by the "county median sale price of  
21 a single-family home in the preceding calendar year," which could  
22 exceed the exemption cap. Rev. Code Wash. § 6.13.030 (2021).

23 Paucity of precedent regarding a phenomenon migrating into  
24 the Ninth Circuit warrants more extensive analysis than is usual.

25

26 I

27 The Statutory Context

28 The 2005 Amendments to the Bankruptcy Code, commonly known

1 as BAPCPA, included a package that included three new subsections  
2 to § 522 in order to address perceived abuses of exemptions.

3 By these amendments Congress exercised its Constitutional  
4 authority under the Bankruptcy Clause at Article I, Section 8, to  
5 preempt state-law exemptions with which it had not previously  
6 interfered. U.S. Const. Art. 1, § 8.

A

## Exemption Planning

The first provision, § 522(o),<sup>2</sup> is a quasi fraudulent transfer provision addressed to abusive exemption planning transfers infected by actual intent to hinder, delay, or defraud creditors made within the 10 years preceding bankruptcy. The reduction of an exemption on account of a § 522(o) violation turns on actual intent and does not require that the debtor have relocated from another state. 11 U.S.C. § 522(o).

<sup>2</sup>Section 522(o) provides:

(o) For purposes of subsection (b) (3) (A), and notwithstanding subsection (a), the value on an interest in -

(1) real or personal property that the debtor or a dependent of the debtor uses as a residence;

(2) a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence;

(3) a burial plot for the debtor or a dependent of the debtor; or

(4) real or personal property that the debtor or a dependent of the debtor claims as a homestead;

shall be reduced to the extent that such value is attributable to any portion of any property that the debtor disposed of in the 10-year period ending on the date of the filing of the petition with intent to hinder, delay, or defraud a creditor and that the debtor could not exempt, or that portion that the debtor could not exempt, under subsection (b), if on such date the debtor had held the property so disposed of.

11 U.S.C. § 522(o).

B

## Bankruptcy Tourism

The second added subsection, § 522(p),<sup>3</sup> addressed abusive bankruptcy tourism to remedy the so-called “mansion loophole” that figured prominently in legislative debate.

6 It had become regarded as a notorious abuse that individuals  
7 facing large liabilities would relocate from low-exemption states  
8 to high-exemption states, such as Florida or Texas, and purchase  
9 mansions as a homestead before filing a bankruptcy case.

10 New subsection § 522(p) prescribes an inflation-adjusted  
11 exemption cap (presently \$189,050) for interests in property

<sup>3</sup>Section 522(p) provides:

(p) (1) Except as provided in paragraph (2) of this subsection and sections 544 and 548, as a result of electing under subsection (b) (3) (A) to exempt property under State or local law, a debtor may not exempt any amount of interest that was acquired by the debtor during the 1215-day period preceding the date of the filing of the petition that exceeds in the aggregate [now \$189,050] in value in -

(A) real or personal property that the debtor or a dependent of the debtor uses as a residence;

(B) a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence;

(C) a burial plot for the debtor or a dependent of the debtor; or

(D) real or personal property that the debtor or a dependent of the debtor claims as a homestead;

(2) (A) The limitation under paragraph (1) shall not apply to an exemption claimed under subsection (b) (3) (A) by a family farmer for the principal residence of such farmer.

(B) For purposes of paragraph (1), any amount of such interest does not include any interest transferred from a debtor's previous principal residence (which was acquired prior to the beginning of such 1215-day period) into the debtor's current principal residence, if the debtor's previous and current residences are located in the same State.

11 U.S.C. § 522(p).

1 "acquired" within 1215 days preceding the bankruptcy case filing  
2 by persons who move from another state. 11 U.S.C. § 522(p).

3 This provision complemented a revision of § 522(b)(3) that  
4 saddles those who change domicile with the exemptions of their  
5 former domicile for up to two years. 11 U.S.C. § 522(b)(3)(A).

6

7 C

8 Abusive Exemption of Debt Arising From Misconduct

9 The third provision, § 522(q),<sup>4</sup> prescribes the same \$189,050

10  
11 <sup>4</sup>Section 522(q) provides:

12 (q)(1) As a result of electing under subsection (b)(3)(A) to  
13 exempt property under State or local law, a debtor may not exempt  
14 any amount of an interest in property described in subparagraph  
15 (A), (B), (C), and (D) of subsection (p)(1), which exceeds in the  
16 aggregate [now \$189,050] if –

17 (A) the court determines, after notice and a hearing,  
18 that the debtor has been convicted of a felony (as defined  
19 in section 3156 of title 18), which under the circumstances,  
20 demonstrates that the filing of the case was an abuse of the  
provisions of this title; or

21 (B) the debtor owes a debt arising from –

22 (i) any violation of the Federal securities laws (as  
23 defined in section 3(a)(47) of the Securities Exchange Act  
24 of 1934), any State securities law, or any regulation or  
order issued under Federal securities laws or State  
securities laws;

25 (ii) fraud, deceit or manipulation in a fiduciary  
capacity or in connection with the purchase and sale of any  
security registered under section 12 or 15(d) of the  
Securities Exchange Act of 1934 or under section 6 of the  
Securities Act of 1933;

26 (iii) any civil remedy under section 1964 of title  
18; or

27 (iv) any criminal act, intentional tort, or willful  
or reckless misconduct that caused serious physical injury  
or death to another individual in the preceding 5 years.

28 (2) Paragraph (1) shall not apply to the extent the amount of  
an interest in property described in subparagraphs (A), (B), (C)  
and (D) of subsection (p)(1) is reasonably necessary for the  
support of the debtor and any dependent of the debtor.

1 exemption cap as § 522(p), but does not depend on when interests  
2 in property are acquired and applies to everyone, not just  
3 persons relocating from another state. It is designed to close  
4 the “mansion loophole” for persons who commit specified forms of  
5 misconduct and features a savings clause to ameliorate harsh  
6 consequences for debtors and dependents. 11 U.S.C. § 522(q).<sup>5</sup>

7

8 II

9 Early Debates Regarding Construction

10 The background and legislative history of the 2005 additions  
11 to § 522 came into focus in the course of the first substantial  
12 controversy regarding their terms.

13 The phrase “as a result of electing under subsection  
14 (b) (3) (A) to exempt property under State or local law” that is in  
15 §§ 522(p) and (q) stirred debate about whether Congress had  
16 succeeded in closing the dysfunctional “mansion loophole.”

17 One school invoked “plain meaning” to contend that “result  
18 of electing” meant that the cap on exemptions could not apply in  
19 states that had exercised the § 522(b) (2) authority to prohibit  
20 use of the § 522(d) federal exemptions.<sup>6</sup> In re McNabb, 326 B.R.

21

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22 11 U.S.C. § 522(q).

23 <sup>5</sup>The House Judiciary Committee Report on BAPCPA and  
24 § 522(q)(1)(B)(ii) & (iii) noted “concerns that former Enron  
25 Chairman Kenneth Lay would be entitled to an unlimited homestead  
exemption in his native Texas should he file for Bankruptcy.”  
H.R. REP. No. 109-31(1) at 595 (2005).

26 <sup>6</sup>A state’s power to “opt-out” of the federal bankruptcy  
27 exemptions at § 522(d) is at § 522(b)(2):

28 (b)(2) Property listed in this paragraph is property that  
is specified under subsection (d), unless the State law that

1 785 (Bankr. D. Ariz. 2005). It reasoned that no "election" occurs  
2 when there is only one possible exemption choice. However, the  
3 paradigm "mansion loophole" example is in such a jurisdiction.

4 The other school contended the cap applies in all states. To  
5 hold otherwise, based on the history of the "mansion loophole,"  
6 would defeat the plain purpose of the exemption cap. E.g., In re  
7 Virissimo, 322 B.R. 201, 207 (Bankr. D. Nev. 2005).

8 In 2006, Judge Markell, rebutting McNabb, detailed the  
9 history of the "mansion loophole" abuse in the context of rules  
10 of statutory construction to conclude that the phrase "result of  
11 electing" may have been inept draftsmanship but could not be  
12 construed so as to defeat Congress' avowed purpose of closing the  
13 loophole. In re Kane, 336 B.R. 477, 479-85 (Bankr. D. Nev. 2006).

14 The view stated in Kane gains support from recognition of  
15 fallacy in the McNabb reasoning in which one exemption "election"  
16 was overlooked. The key is the threshold provision in § 522(b)(1)  
17 that an individual debtor "may exempt" property from property of  
18 the estate.<sup>7</sup> Virissimo, 322 B.R. at 207. As the word "may" is  
19 permissive, not mandatory, it follows that every claim of  
20 exemption entails "electing" to exempt property.

21 \_\_\_\_\_  
22 is applicable to the debtor under paragraph (3) (A)  
23 specifically does not so authorize.

24 11 U.S.C. § 522(b)(2).

25 <sup>7</sup>The first sentence of § 522(b)(1) provides:

26 (b)(1) Notwithstanding section 541 of this title, an  
27 individual debtor may exempt from property of the estate the  
28 property listed in either paragraph (2) or in the  
alternative, paragraph (3) of this subsection.

11 U.S.C. § 522(b)(1).

In short, the fallacy of false choice infects McNabb. One cannot ignore the election preliminary to every claim of exemption. There is always a § 522(b)(1) "election" to exempt or not exempt, regardless of whether the state has opted out of § 522(d) exemptions. Nor is the "no-exemption" election absurd; debtors may elect to forego exemptions for various reasons.

The weight of modern trial-court authority supports the Kane-Virissimo analysis.

The Bankruptcy Appellate Panel and at least one District Court in this circuit have approved the Kane-Virissimo view that § 522(p) and § 522(q) apply in all states. E.g., Caldwell v. Nelson (In re Caldwell), 545 B.R. 605, 609 (9th Cir. BAP 2016); Kane v. Zions Bancorporation, N.A., \_\_\_ F. Supp. 3d \_\_\_, Bankr. L. Rep. ¶ 83,821, 2022 Westlaw 4591787, at \*6-\*8 (N.D. Cal. 9/29/22) (Orrick, D.J.), notice of appeal filed, 9th Cir. No. 22-16674.

16 This court agrees and holds that the exemption caps in  
17 § 522(p) and § 522(q) apply in California bankruptcy cases.

三

## § 522 (g) Misconduct Issues

Unlike the 522(p) 1215-day exemption cap, which has been the subject of cases involving timing issues and the meaning of "acquire," the terms of the § 522(q) exemption cap for bad acts have only occasionally been addressed in reported cases.

A

### Cross-References in § 522(p) and § 522(q)

28 | What is the effect of the cross-reference in § 522(q) to the

1 1215-day § 522(p) cap that applies to bankruptcy tourists?

The syntax of the two subsections reveals that the cross-references in § 522(q)(1) to paragraphs (A), (B), (C), and (D) of § 522(p)(1) operate merely to designate the property to which the permanent cap of § 522(q) applies. Specifically, the property affected by a § 522(q) cap is the same property that is subject to the § 522(p)(1) 1215-day temporary cap.

The cross-references do not, however, tether § 522(q) to  
1215-day provision of § 522(p) in any other respect. The § 522(q)  
exemption cap applies to all homesteads wherever situated. To  
hold otherwise would invalidate and leave § 522(q) meaningless.

十二

15 The bad acts that trigger the § 522(q)(1) permanent cap on  
16 exemptions are a hodge-podge of five little-explored categories:

(2) debt from any violation of federal or state securities laws and regulations or orders issued under them;

(4) debt from any civil remedy for racketeering; and

(5) debt from any criminal act, intentional tort, or willful or reckless misconduct that caused serious physical injury or death to another individual within the preceding five years.

11 U.S.C. § 522(g)(1).

27 There is a savings clause at § 522(q)(2) permitting the  
28 § 522(q)(1) exemption cap to be exceeded to the extent

1 "reasonably necessary for the support of the debtor and any  
2 dependent of the debtor."<sup>8</sup>

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4 1

5 There is authority under § 522(q)(1)(A) construing what  
6 "under the circumstances" constitutes an "abuse" of title 11  
7 following a felony conviction. In re Cotton, 647 B.R. 767 (Bankr.  
8 W.D. Wash. 2022) (Washington exemption).

9  
10 2

11 Violation of securities laws for purposes of  
12 § 522(q)(1)(B)(i) has been addressed in a Texas decision. In re  
13 Bounds, 491 B.R. 440 (Bankr. W.D. Tex. 2013).

14  
15 3

16 The § 522(q)(1)(B)(ii) clause regarding "fraud, deceit, and  
17 manipulation in a fiduciary capacity" was addressed in an Enron  
18 executive's bankruptcy. In re Presto, 376 B.R. 554, 586-601  
19 (Bankr. S.D. Tex. 2007).

20  
21 4

22 The § 522(q)(1)(B)(iii) clause regarding "any civil remedy

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24 <sup>8</sup>Section 522(q)(2) provides:

25 (q)(2) Paragraph (1) shall not apply to the extent the  
26 amount of an interest in property described in subparagraphs  
27 (A), (B), (C), and (D) of subsection (p)(1) is reasonably  
28 necessary for the support of the debtor and any dependent of  
the debtor.

11 U.S.C. § 522(q)(2).

1 under section 1964 of title 18," which relates to racketeering,  
2 does not yet appear in reported decisions.

3  
4 5

5 The First Circuit construed the § 522(q) (1) (B) (iv) clause  
6 regarding "any criminal act, intentional tort, or willful or  
7 reckless misconduct that caused serious physical injury or death  
8 to another individual in the preceding 5 years." Larson v. Howell  
9 (In re Larson), 513 F.3d 325 (1st Cir. 2008), aff'g 340 B.R. 444  
10 (Bankr. D. Mass 2006) (negligent homicide conviction).

11  
12 C

13 § 522(q) (2) Savings Clause

14 The savings clause of § 522(q) (2) for sums exceeding the  
15 § 522(q) (1) cap regarding what is "reasonably necessary for the  
16 support of the debtor and any dependent of the debtor" has been  
17 construed in a few cases. E.g., Bounds, 491 B.R. at 452-54;  
18 Presto, 376 B.R. at 598-600.

19  
20 D

21 Fraud, Deceit, or Manipulation in a Fiduciary Capacity

22 The provision of particular pertinence to this case is  
23 § 522(q) (1) (B) (ii) prescribing a \$189,050 exemption cap if the  
24 debtor owes a debt "arising from" - "fraud, deceit or  
25 manipulation in a fiduciary capacity."

26 Whether the provision, which also is in § 548(e) (2) (B),  
27 encompasses the issues in the two pending adversary proceedings  
28 alleging causes of action under § 523(a) (2) and § 523(a) (4) is an

1 open question as to which this court expresses no view.

2 Key questions will need to be resolved in the usual  
3 adversary manner:

4 What constitutes the requisite "fraud"?

5 What constitutes the requisite "deceit"?

6 What constitutes the requisite "manipulation"?

7 What constitutes the requisite "fiduciary capacity"?

8 Does "in a fiduciary capacity" modify "fraud" or "deceit"?

9 Although similarities of language with § 523(a)(2) and  
10 § 523(a)(4) are intriguing, one would need to consider the  
11 implications of why Congress did not merely clone them.

12 Answers to those questions must await decisions made in the  
13 usual case-by-case adversary manner.

14

15 IV

16 Procedure and Burdens

17 Although the paucity of § 522(q) precedent regarding  
18 substantive provisions leaves much uncertain, it is possible to  
19 be more definite about procedure and burdens.

20

21 A

22 Deadline to Make § 522(q) Objections

23 Rule 4003(b)(3) permits an objection to exemption under  
24 § 522(q) to be made by any party in interest at any time before  
25 the case closes.<sup>9</sup>

26

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27 <sup>9</sup>Rule 4003(b)(3) provides:

28 (b)(3) An objection to a claim of exemption based on  
§ 522(q) shall be filed before the closing of the case. If

1       The expiration of the normal deadline under Rule 4003(b)(1)  
2 — usually 30 days after meeting of creditors or last amendment to  
3 claim of exemption<sup>10</sup> — does not affect the § 522(q) deadline.

4       In other words, open season on § 522(q) theories for  
5 limiting exemptions to the exemption cap does not expire before  
6 the case closes.

7       The prolonged opportunity to object under § 522(q) means  
8 that an order under § 554 authorizing or compelling abandonment  
9 cannot be trusted to be final before the case closes.<sup>11</sup> Until  
10 then, there is the risk that someone will surface with a § 522(q)  
11 objection. When there is pending litigation that alleges some  
12 trigger elements of § 522(q), the prudent course is for the court  
13 to decline to order a § 554 abandonment before the case closes.

14       Closure of the case, by operation of § 554(c), includes

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15  
16       an exemption is first claimed after a case is reopened, an  
17       objection shall be filed before the reopened case is closed.

18 Fed. R. Bankr. P. 4003(b)(3).

19       <sup>10</sup>Rule 4003(b)(1) provides:

20       (b)(1) Except as provided in paragraphs (2) and (3), a  
21       party in interest may file an objection to the list of  
22       property claimed as exempt within 30 days after the meeting  
23       of creditors held under § 341(a) is concluded or within 30  
24       days after any amendment to the list or supplemental  
25       schedules is filed, whichever is later. The court may, for  
26       cause, extend the time for filing objections if, before the  
27       time to object expires, a party in interest files a request  
28       for an extension.

29 Fed. R. Bankr. P. 4003(b)(1).

30       <sup>11</sup>If it were to be determined that the \$189,050 exemption  
31       cap applies, then it may be possible for the judgment lien  
32       creditors whose liens were avoided in this case on the premise a  
33       \$626,400 exemption applies to ask the court to revisit the  
34       questions of avoiding the respective liens.

1 abandonment of all correctly scheduled property not otherwise  
2 administered. 11 U.S.C. § 554(c).<sup>12</sup>

3  
4 B

5 Standing

6 Any party in interest has standing to make a § 522(q)  
7 objection to exemptions. Fed. R. Bankr. P. 4003(a)(1).

8 In addition to the plaintiffs in the pending adversary  
9 proceedings, the trustee may object, and any other party in  
10 interest could object.

11 One rationale for liberal standing is that the \$189,050  
12 exemption cap against a \$626,400 exemption claim could make  
13 \$437,350 available as property of the estate, which case could  
14 translate to a substantially increased dividend.

15  
16 C

17 Burdens

18 Shifting burdens apply in objections to exemptions in  
19 California bankruptcy cases.

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21 1

22 The applicable burden of proof for exemptions claimed under  
23 California law is allocated by California statute governing  
24 judgment enforcement.

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25  
26 <sup>12</sup>Trap for unwary: property of the estate that has not been  
27 scheduled remains property of the estate, essentially forever. 11  
U.S.C. § 554(d); cf., In re Dunning Bros., 410 B.R. 877 (Bankr.  
28 E.D. Cal. 2009) (case reopened in 2009 to administer unscheduled  
property in case filed in 1936).

In general, the claimant of the exemption has the burden of proof of entitlement to a homestead exemption. Cal. Code Civ. Pro. § 703.580(b).<sup>13</sup>

The burden, however, is on the objector if the records of the county tax assessor reflect a property tax claim of homeowners exemption or disabled veterans exemption. Cal. Code Civ. P. § 704.780(a)(1).<sup>14</sup>

2

In the context of § 522(q), after it is established there is entitlement to a homestead exemption, an objector asserting the § 522(q) exemption cap has the burden to prove the predicate for capping the exemption. Here, that would entail proof of the "fraud, deceit, or manipulation in a fiduciary capacity" required by § 522(q)(1)(B)(ii).

<sup>13</sup>Cal. Code Civ. Pro. § 703.580(b) provides:

(b) At a hearing under this section, the exemption claimant has the burden of proof.

Cal. Code Civ. Pro. § 703.580(b) .

<sup>14</sup>Cal. Code Civ. Pro. § 704.780(a)(1) provides:

(1) If the records of the county tax assessor indicate that there is a current homeowner's exemption or disabled veteran's exemption for the dwelling claimed by the judgment debtor or the judgment debtor's spouse, the judgment creditor has the burden of proof that the dwelling is not a homestead. If the records of the county tax assessor indicate that there is not a current homeowner's exemption or disabled veteran's exemption for the dwelling claimed by the judgment debtor or the judgment debtor's spouse, the burden of proof that the dwelling is a homestead is on the person who claims that the dwelling is a homestead.

Cal. Code Civ. Pro. § 704.780(a)(1).

3

Finally, the § 522(q)(2) safety valve permitting an upward adjustment of the cap for necessary support is in the nature of an affirmative defense.

If the cap is determined to apply, then the exemption claimant has the burden of persuasion and correlative risk of nonpersuasion on the question of the "amount reasonably necessary for the support of the debtor and any dependent of the debtor." 11 U.S.C. § 522(q)(2).

10 The record in this case is silent about whether the Placer  
11 County Tax Assessor's records reflect the debtor has claimed a  
12 homeowner's tax exemption or a disabled veteran's exemption.

4

15 The provision of Rule 4003(c) purporting to allocate the  
16 burden of proof to exemption objectors cannot trump California's  
17 statutory allocations of burdens for state law exemptions.

a

20 Rule 4003(c), to the extent it displaces state-law burdens  
21 with respect to exemptions provided by state law, offends the  
22 Bankruptcy Rules Enabling Act, which forbids rules that modify  
23 any substantive right. 28 U.S.C. § 2075.

The Supreme Court's 2000 ruling that bankruptcy does not alter the burden imposed by underlying substantive law clarified that burden of proof is substantive, not procedural. Raleigh v. Ill. Dept. of Revenue, 530 U.S. 15 (2000). Although the status of burden of proof as procedural or substantive may have been

1 uncertain before Raleigh, after 2000 the law is: "the burden of  
2 proof is an essential element of the claim itself; one who  
3 asserts a claim is entitled to the burden of proof that normally  
4 comes with it." Raleigh, 530 U.S. at 21.

5 To the extent Rule 4003(c) modifies the burden of proof for  
6 exemptions claimed under state law, the rule violates the  
7 prohibition on modifying substantive rights. In other words,  
8 regardless of Rule 4003(c), state law exemptions control the  
9 burdens of proof governing state law exemptions. Anderson v.  
10 Nolan (In re Nolan), 2022 Westlaw 327927, \*2 (9th Cir. 2022),  
11 aff'q 2021 Westlaw 528679, \*3, (C.D. Cal. 2021), aff'q 618 B.R.  
12 860 (Bankr. C.D. Cal. 2020).

13 When in 2005 Congress imposed exemption caps on state-law  
14 exemptions, it did not modify basic proof rules regarding state-  
15 law exemptions.

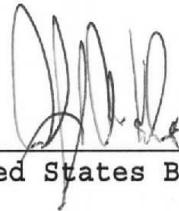
16  
17 b

18 After Raleigh and the recognition of the infirmity of Rule  
19 4003(c), California state-law exemptions have been construed by  
20 bankruptcy courts as subject to the burdens of proof prescribed  
21 by state law, which generally place the burden on the person  
22 claiming the exemption. E.g., In re Pashenee, 531 B.R. 834, 837  
23 (Bankr. E.D. Cal. 2015); In re Tallerico, 532 B.R. 774, 780-81  
24 (Bankr. E.D. Cal. 2015). Accord, e.g., Bhangoo v. Engs Comm. Fin.  
25 Co. (In re Bhangoo), 634 B.R. 80, 85 (9th Cir. BAP 2021); Diaz v.  
26 Kosmala (In re Diaz), 547 B.R. 329, 337 (9th Cir. BAP 2016),  
27 cited with approval Nolan, supra (9th Cir. 2022).

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1                           Conclusion

2       The debtor's motion to compel abandonment of his homestead  
3 property pursuant to § 554(b) is DENIED as premature because the  
4 deadline under Rule 4003(b)(3) for any party in interest to  
5 object that the \$189,050 § 522(q) exemption cap applies to limit  
6 the debtor's \$626,400 exemption does not expire until the case  
7 closes. Pending litigation implicates § 522(q)(1)(B)(ii). If the  
8 exemption cap does apply, then the subject property could be of  
9 consequential value and benefit to the estate.

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12                           Dated: March 23, 2023  
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16                           United States Bankruptcy Judge  
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